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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket 95-155
Toll-Free Service Access Codes)

FURTHER COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by counsel, hereby files these further comments in the above-captioned docket, pursuant to the Federal Communications Commission's (Commission) Public Notice of July 2, 1997.¹ By seeking further comment, the Commission intends to refresh the record on the Notice of Proposed Rulemaking in this docket, which is now almost two years old. The Commission specifically seeks further comment on the issues associated with the treatment of vanity numbers, both with 888 service access codes ("SAC") and with future SACs, such as 877 and 866. The Commission also seeks comment on the topic of the possibility of a vanity number lottery and Standard Industrial Classification Codes.

MCI applauds the Commission's efforts in this regard, as well as its sensitivity to the fact that the passage of time has made the record somewhat stale in this case as it concerns treatment of vanity numbers. MCI thus appreciates the opportunity to refresh the record in this proceeding, and will not repeat herein the comments it provided in 1995.² As requested by the Commission,

¹See 62 Fed. Reg. 36476 (July 8, 1997).

²For ease of reference, the Comments of MCI, filed on November 1, 1995, are attached as Exhibit A. The Commission specifically seeks further comment on the question whether lotteries should be used to assign a toll-free number that has been reserved at precisely the same

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MCI comments are confined to issues concerning 888 vanity numbers and vanity numbers in future codes, and avoids simply reiterating its earlier pleading.

I. THE COMMISSION'S RULES SHOULD SPECIFICALLY DECLINE TO SUPPORT THE AUCTIONING OF TOLL FREE VANITY NUMBERS.

One very specific and significant recent event has contributed to the need for refreshment of the record in this proceeding. In February 1997, the Clinton Administration proposed, as part of its 1997 budget amendment for fiscal year 1998, raising an estimated \$700 million by authorizing the Commission to auction off rights to toll-free SACs other than 800.³ The Commission should not support this proposal.

Toll-free telephone service is a central component of the daily conduct of business across the nation. Literally thousands of large and small business, non-profit organizations, government agencies, and even individuals, routinely offer toll-free service to the public. Banks, securities firms, and other providers of financial services rely extensively on toll-free numbers to facilitate consumer communications, conduct financial transactions, and prevent fraudulent activities.

Toll-free vanity numbers are attractive because they are easily recognized combinations of symbols which the public quickly associates with the business or product that is offered by the entity to which the vanity number is assigned. A vanity number can thus be a word or acronym associated with a particular seven digit telephone number such as 1-800-FLOWERS, 1-800 THE CARD, or 1-800-CARRENT. A vanity number can also be a telephone number closely

time by two different Responsible Organizations (RespOrgs). MCI opposed, and continues to oppose, lotteries. See Exhibit A at pp. 10-12.

³ Budget of United States Government, Fiscal Year 1998, Table S-6, p. 311. See Exhibit B.

identified with a particular entity such as the toll free number used by Delta Airlines for nationwide reservations, 800-221-1212, or the nationwide 800 Internal Revenue Service taxpayer assistance number 800-IRS-1040. Vanity numbers are also a critical part of millions of small businesses, such as the small distributor of handmade soaps which uses the number 800-WETSOAP. Although only approximately 6% of all toll-free numbers are vanity numbers, the entities to which those numbers are assigned invest millions of dollars annually to promote the identification of the number with the particular product or service offered.

The recent marked surge in the use of pagers and other forms of personal communication devices -- as well as the increased use of toll-free numbers by large and small business, non-profit organizations and federal and state governments -- has depleted the supply of available toll-free numbers in the 800 SAC. After opening a new toll-free service access code, 888, the Commission ordered that all equivalent 888 numbers designated by current 800 subscribers be set aside and held in unavailable status during the initial 888 reservation period.⁴ It is those 888 numbers that are in unavailable status that the Administration proposes for auction.

MCI strongly opposes the notion that the Commission should endorse the Administration's auction proposal. An auction is inappropriate for telecommunications services that are plentiful. The universe of SACs, is potentially infinite and has no intrinsic value apart from that invested by a single entity to make a number memorable and valuable to the public. Unlike the amount of available spectrum, which has been the subject of competitive bidding

⁴11 FCC Rcd 2496, 2509 (Jan. 25, 1996). The Commission concluded that since personal toll free subscribers have no commercial interest in their 800 numbers, the corresponding 888 service access code was ineligible for unavailable status. *Id.* at 2498.

mechanisms to derive the maximum amount of federal revenue from its licensing, the amount of available SACs is not limited. SACs are not subject to the same physical constraints as spectrum, and thus should not be treated like spectrum. Instead, there is a potentially infinite amount of SACs that can be made available for future use.

Another reason to reject the notion that 888 SACs should be auctioned is that auctions could lead to widespread consumer confusion and fraud. For example, if Company A outbids Company B for the 888 equivalent of the 800 number that Company B has used for several years, consumers would be confused as to how to reach each company. Many misdials would occur, resulting in consumer frustration and additional unjustified charges to both parties. Additionally, if Company A and Company B are in the same business, it is possible that the customer service representative that answers could spend a significant amount of time answering the caller's questions before it was determined that the caller was actually trying to reach the other company. Auctions should not be employed in order to avoid these confusing impacts on the public and the entities that use toll-free SACs to conduct business.

Auction of 888 numbers would also likely result in the encouragement of anti-competitive business practices. For example, if Company A in the above scenario is engaged in a business in direct competition with Company B, the incentive for Company B (which lost the bid for the 888 number) to engage in tactics designed to mislead and confuse the public cannot be understated. Likewise, although Company A may have won the auction, and thus the right to compete with Company B using the 888 number, there is a similar incentive for that Company A to engage in unfair competitive tactics as well.

Another fundamental problem with implementation of an auction for 888 SACs is that auctions would encourage bidders to engage in a form of legalized extortion. Fly-by-night companies, speculators, and number brokers will submit bids for an 888 number that has value to the operator of the equivalent 800 number in order to “sell” that 888 number to the legitimate operator. Thus, the only entities that would bid against legitimate operators will be speculators seeking to turn a quick profit.⁵ The “revenue” derived from such auctions would be ill-gotten gains obtained at the expense of legitimate entities that have invested tremendous effort and large sums of money in order to meet consumer demand for their product. Implementation of an auction in these circumstances would not be good public policy. Although the Commission cannot possibly be expected to police in all aspects companies that might engage in such behavior, it should seek to implement rules and policies that minimize, rather than maximize, the possibility and incentives for such undesirable and anti-competitive behavior to occur.

II. THE COMMISSION SHOULD NOT EMPLOY STANDARD INDUSTRIAL CLASSIFICATION CODES.

The Commission’s Public Notice seeks comments on the use of Standard Industrial Classification Codes (SICCs) to alleviate the potential employment by companies of the unfair competitive tactics described above. Under this approach, holders of 800 numbers and those desiring the matching number in the 888 SAC (and succeeding future SACs) would be assigned a SICC that corresponded to the type of business in which those companies were engaged. Thus, a

⁵The Commission recently issued very specific prohibitions against such behavior and should not now endorse a procedure that would literally invite violation of those rules. *See In the Matter of Toll Free Service Access Codes*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-155, ¶ 39 (rel. Apr. 11, 1997).

new subscriber would be ineligible to reserve an 888 number that already corresponds to the current holder under the assigned SICC.

MCI opposes the use of SICCs for several reasons. First, it would not accomplish the goal of avoiding anti-competitive behavior. In fact, the “self-assignment” of SICCs invites subscribers to misrepresent their business type in order to obtain a SICC that does not interfere with their ability to get a desired number. There is no adequate way to police this process. Certainly, RespOrgs should not have to vouch for the honesty of subscribers as they assign SICCs to themselves.

Another reason to reject the use of SICCs in this scenario is that a subscriber can be involved in many different businesses at once. As a result, the SICC approach does not provide adequate flexibility to accommodate evolving and diverse business interests. In an age where business interests and goals change daily, and where mergers and acquisitions make it increasingly difficult to define the scope of a company’s business (or that of its affiliates and subsidiaries), use of SICCs would unreasonably burden businesses with an administrative process that would take a significant amount of time and energy to implement.

III. THE COMMISSION SHOULD ENSURE THAT AN ENTITY FROM WHICH AN 800 NUMBER HAS BEEN PORTED, HAS NO RIGHT TO THE PORTED 800 NUMBER OR ITS 888 COMPLIMENT.

As noted earlier, in 1996, the Commission ordered that all 888 numbers be placed in “unavailable” status until such time as a decision was made on how those numbers should be allocated.⁶ Pursuant to the Order, once a code holder was no longer interested in a number, the

⁶11 FCC Rcd 2496, 2509 (Jan. 25, 1996).

holder was to notify DSMI of its "relinquishment" of the 800 number, as well as relinquishment of any interest in the corresponding 888 number. Since almost two years have passed since issuance of the Order, it is entirely possible, and even most likely, that several 800 numbers have been ported since the Commission's placement of 888 numbers in unavailable status. As a result, the original request for unavailable 888 status may have been made by the former holder of the 800 number, which no longer has an interest in the number. The Commission should implement a rule that avoids unfairly depriving the new users of those ported 800 numbers of the opportunity to request placement of the corresponding 888 number in the unavailable status. Specifically, the Commission should adopt a rule stating that the former holder of ported numbers has no right to the ported 800 number or its 888 complement, even though he made the original 888 "unavailable status" request.

WHEREFORE, for the foregoing reasons, MCI requests that the Commission decline to adopt the Clinton Administration's auction proposal, should reject the use of SICCs and should ensure that an entity from which an 800 number has been ported has no right to the ported 800 number or its 888 equivalent.

Respectfully submitted,

MCI TELECOMMUNICATIONS
CORPORATION

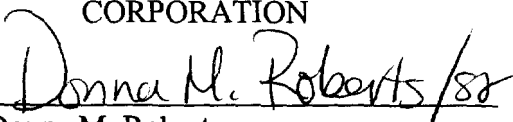

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EXHIBIT A

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Before the
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OFFICE OF SECRETARY

In the Matter of)
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Toll-Free Service Access Codes)
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CC Docket No. 95-155

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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Dated: November 1, 1995

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SUMMARY

MCI does not support a requirement that a RespOrg obtain an affirmative request from a subscriber before reserving a number, or a requirement for an escrow deposit when reserving a number. MCI does not support reducing the time periods during which a number can be held in certain statuses, or further restricting the quantity limitation on reserved numbers.

MCI supports a 45-day advance reservation period prior to opening of the 888 code. MCI supports holding 800 vanity numbers in unavailable status until they can be resolved after the code is opened. MCI also supports a 50 percent trigger for the planning of implementation beyond the 888 code. MCI supports collection of additional information and release in aggregate form only. And, MCI supports a limited industry campaign to educate the public about additional toll-free resources.

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Toll-Free Service Access Codes)

CC Docket No. 95-155

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation and its affiliated companies (MCI)¹ respectfully submit these comments in response to the Notice of Proposed Rulemaking (Notice) released by the Federal Communications Commission (FCC or Commission) in the captioned proceeding.² As explained more fully below, MCI opposes requiring affirmative requests from subscribers before numbers can be reserved and opposes an escrow requirement. MCI supports an advance reservation approach prior to opening of the 888 code and holding 800 vanity numbers in unavailable status until after the code is opened and their assignment can be resolved. MCI does not support reducing the time periods during which a number can be held in certain statuses, or further restricting the quantity limitation on reserved numbers. MCI supports a 50

¹ MCI has expanded from its core long-distance business and today provides a wide array of consumer and business long-distance, local, data and video communications, as well as on-line information, electronic mail, network management services and communications software.

² FCC No. 95-419, released Oct. 5, 1995.

percent trigger for the planning of implementation beyond the 888 code, collection of additional information and release in aggregate form, and an industry campaign to educate the public about additional toll-free resources.

I. EFFICIENT USE OF TOLL-FREE NUMBERS

A. THE COMMISSION SHOULD NOT REQUIRE A RESPONSIBLE ORGANIZATION TO OBTAIN AN AFFIRMATIVE REQUEST BEFORE RESERVING A NUMBER

MCI does not support the Commission's proposal to require a Responsible Organization (RespOrg) or 800 service provider to have an affirmative request from a subscriber before assigning a toll-free number to the customer (para. 13). Toll-free and other communications services are often promoted to prospective customers by telephone marketing. Requiring a request from subscribers would impose a substantial and unnecessary burden, and would unreasonably delay service installation and implementation.

Nor is a separate request necessary when the toll-free number is requested by the customer as part of a "package" of services. The customer's request for such an offering should be sufficient to signify interest in the toll-free number. The FCC should recognize that communications services are increasingly offered in conjunction with other telecommunications services. Requiring an authorization for each service or feature would discourage a trend that is beneficial to customers and in which customers are

increasingly expressing an interest.

Finally, a request requirement would unnecessarily burden RespOrgs and the FCC in monitoring and policing these requests.

B. THE COMMISSION SHOULD NOT REQUIRE AN ESCROW
DEPOSIT FOR REQUESTS TO RESERVE NUMBERS

MCI does not support the FCC's proposal to require a deposit into an escrow account for each toll-free number requested to be held in reserved status (para. 14-16). An escrow deposit would unnecessarily increase the costs of administering toll-free resources. The FCC has enforcement authority it can use against an entity or individual who abuses the number reservation process. An enforcement action would be more effective in deterring abuse than would imposition of a fee for reservation and the cumbersome processes it would entail.

If a decision were made to impose such a fee, the FCC would need to establish a fee structure and level that would apply across all services to avoid discrimination against any service segment. There is a risk that setting a level high enough to deter an errant large business customer might require a fee so high as to inhibit a residential or small business customer from obtaining a number that it needs. The FCC should recognize that some business customers would have a greater ability to pass this fee to their own customers as a cost of doing business. This could increase

costs to consumers of not only telecommunications services but of products and services purchased from businesses that use toll-free numbers.

C. MCI DOES NOT SUPPORT REDUCING THE TIME PERIODS DURING WHICH NUMBERS ARE HELD IN CERTAIN STATUSES

The FCC proposes to reduce the amount of time a number can remain in reserved status from 60 to 45 or 30 days (para. 18). MCI does not support this proposal as its experience shows that a certain amount of time is needed to make the necessary arrangements with local exchange carriers and to have the numbers processed for activation by the database manager. For example, if the toll-free customer is requesting new service and needs a T-1 trunk, the RespOrg must negotiate and obtain the facility from the local carrier.

MCI does not support the FCC's proposal to reduce from twelve to four months the amount of time a number can be in assigned status before it is changed to working status (para. 18). The assigned period refers to the time after which the RespOrg has entered specific customer routing information in the Service Management System's (SMS's) toll-free number record, and while the number is pending activation in the SMS to be sent to the local exchange carriers' Service Control Points. The assigned period was established at 12 months to accommodate the needs of certain customers with special needs requiring the number to be set

up at a later date. Decreasing this period would prevent RespOrgs and toll-free service providers from meeting the special needs of these customers.

MCI also does not support the proposal to reduce the transitional period between disconnect and spare statuses from six to four months (para. 19). One purpose of the transitional period is to allow sufficient time between the former number holder and the new customer taking that number, so that residual calls intended for the former holder are minimized. These calls would be billed to the new customer who would then be responsible for paying for them. If the former holder of the number advertised that number heavily in its business undertakings (for instance, a catalog company), residual calls could potentially interfere with the new number holder's ability to conduct its own business. Therefore, MCI believes that six months is needed to protect the new customer from receiving calls intended for the former customer.

Finally, MCI does not support the proposal to reduce the amount of time numbers can be suspended, pending reactivation, from twelve to four months (para. 19). Many numbers are placed in this status for nonpayment or as a result of other billing disputes. In MCI's experience, resolution of these disputes may take longer than four months. While twelve months may be longer than necessary to resolve some customer situations, a shorter period would not

accommodate all cases. In any event, many numbers are either reactivated or released to spare as soon as the dispute is resolved and are not held for the full 12 months. Therefore, decreasing the period would not yield a substantial body of numbers for reassignment, as the Commission apparently anticipates.

D. THE COMMISSION SHOULD ENCOURAGE THE USE OF
PERSONAL IDENTIFICATION NUMBERS

The FCC asks whether it should encourage the use of Personal Identification Numbers (PINs) with toll-free numbers (para. 20). As stated in the Notice, MCI has certain residential and commercial applications that make use of PINs. If the FCC establishes incentives for the use of PINs (para. 21), MCI should be eligible for rewards because it has used PINs prior to any FCC policy promoting their use.

MCI supports an FCC approach that encourages but does not mandate the use of PINs. From the perspective of conserving numbering resources, the use of PINs makes sense. However, as the FCC noted, PINs have disadvantages: they prevent individual customers from porting shared numbers, and they may place an 800 service provider at a disadvantage compared with competing companies that do not use PINs. For these and other reasons the use of PINs would not be appropriate for every toll-free service.

The FCC also asks whether it should encourage PIN use for numbers with low usage and seeks comment on how to define low usage (para. 21). MCI does not support a policy approach that would identify certain numbers or certain services as being less worthy of having a toll-free number. The fact that a number may have little use per month does not make its use less important than high-volume use. For example, an individual who wears a pager so that her aged mother with a heart condition can reach her at any time of day may consider these occasional calls as the most important calls received. As a matter of public policy, the FCC should not get involved in making judgments on the value of calls made to toll-free numbers.

As a practical matter, it would be quite difficult for the industry to identify numbers that have low-volume usage. The volume of usage is not visible to the database manager but only to the individual customers and the 800 service providers. The RespOrg would not release this information without the customer's consent. Consequently, any FCC enforcement of a low-volume policy would be dependent on voluntary disclosure by customers of their service usage.

The FCC also asks whether certain services should be removed from the 800 resource and onto another code, making specific reference to personal and paging segments. MCI does not support segmentation of toll-free resources. Assigning distinct services to separate codes would be an

inefficient use of these resources. The 800 resource would deplete eventually and a third code would need to be opened while the 888 code would be only partially depleted. In addition, as mentioned elsewhere in these comments, services are increasingly offered in packages. Therefore, it may be difficult to determine for a particular service package which resource would be appropriate.

E. THE COMMISSION SHOULD NOT DECREASE THE QUANTITY
LIMITATION FOR RESERVED NUMBERS

The industry's 800 number assignment guidelines limit the quantity of numbers a RespOrg can reserve to the greater of 1,000 numbers or 15 percent of the RespOrg's total working numbers.³ The FCC proposes a permanent cap limiting the total quantity of reserved numbers to a percentage less than the current 15 percent, possibly as low as three percent (para. 33).

MCI supports the 15 percent limit established in the industry's guidelines. This limitation seemed to be working prior to June 1995, when the FCC imposed conservation measures on the 800 number resource. To MCI's knowledge, there has been no proof of "warehousing" or hoarding of numbers; nor has the FCC stated that it found evidence of warehousing or hoarding in its investigation. These are merely unsubstantiated claims put forward by a few parties.

³ Industry Guidelines for 800 Number Administration, Section 2.2.5, Issue 4, June 8, 1995.

Thus, there is no need to further restrict the guideline that was in effect prior to conservation.

The Commission also proposes to require RespOrgs to certify to the FCC that: (1) there is an identified subscriber who has agreed to be billed for service associated with a number requested from the database; and (2) there is an identified, billed subscriber for a number before switching a number from reserved or assigned to working status (para. 34). It asks whether this information should be considered proprietary and whether it should be required monthly, quarterly or annually.

It is not clear how extensive the FCC intends these reports to be. If the FCC intends that the RespOrg would generally certify, on a periodic basis, that it has customers for each reserved and working number, then MCI does not object to filing such a certification.

If, however, the RespOrg would be required to certify information about specific numbers and subscribers, then MCI has serious concerns about the proposal. It appears that the Commission may intend to require an officer of the RespOrg entity to certify, under penalty of fine or imprisonment, that the subscriber is reserving or activating the number under valid circumstances. This requirement would not be possible given the relationship of RespOrg and subscriber. The RespOrg provides toll-free service and the numbers associated with that service. It has no reason to

question, as a general matter, the validity of the customer's request. Furthermore, when the customer requests activation and pays for the service, the RespOrg has no reason to suspect -- and no way to confirm -- that the number is not being activated legitimately. MCI, acting as a RespOrg for the subscriber, would not be in a position to certify to the intention of the subscriber; nor should it be expected to subject itself to penalty for the potential wrongdoing of its customer.

II. IMPLEMENTATION OF THE 888 TOLL-FREE CODE

A. THE COMMISSION SHOULD CODIFY PROCEDURES FOR THE RESERVATION OF TOLL-FREE NUMBERS

The FCC asks whether current reservation and assignment policies should be codified or amended. It asks specifically for comment on (1) the first-come, first-served reservation and assignment process; (2) the reservation limit of 1,000 or 15 percent of a RespOrg's total working toll-free numbers;⁴ and (3) the 60-day maximum reservation before converting to working status (para. 23). It also asks whether a number requested by two RespOrgs should be subject to dispute resolution; and, if no resolution resulted, whether the number should be assigned by lottery.

⁴ MCI has addressed the 15 percent reservation limit and the 60-day reservation period in these comments at section I.E., above.

MCI supports the concept of number reservation on a first-come, first-served basis. This concept runs consistently throughout the industry's guidelines for numbering resources, toll-free as well as others. MCI sees no reason to alter that general principle, which also is accepted as an allocation mechanism in other respects.

Furthermore, as long as the industry continues to observe the first-in-time reservation concept for the toll-free resource, there should be no need for dispute resolution. It is virtually inconceivable that a number would be reserved at the exact same instant by two RespOrgs.

The FCC raises the issue of large RespOrgs using automatic reservation technology (para. 23). MCI believes there is no reason for the FCC to take any action on the use of multiple or mechanized interfaces by RespOrgs. The fact that one RespOrg has a bigger or better system than another does not establish that the 800 database reservation process is flawed or unfair. Every carrier has the opportunity to invest in and to make its network as large as necessary to meet the needs of its customers. The Commission should not create a disincentive to do so. Nor should a carrier be punished for being efficient or responsive to its customers. Also, as the Commission is aware, these RespOrgs purchase access through the local exchange carriers' SMS tariffs. This ability is open to every RespOrg wishing to purchase multiple access.

Finally, the FCC asks whether it should have different reservation procedures for codes of high demand (e.g., 800-555) (para. 23). MCI believes there should not be special rules for any segment of the toll-free resources. It would be difficult, if not impossible, for the FCC or the industry to determine in advance whether a numbering resource would be in high demand. The opening of the 800-555 resource was a special circumstance that may not be duplicated. All segments of the 888 and other toll-free resources should be available under the same reservation procedures.

B. THE COMMISSION SHOULD ALLOW NUMBER RESERVATION
PRIOR TO OPENING OF THE 888 RESOURCE

The FCC asks how it can ensure that no degradation occurs in the performance of the SMS when there is a high volume of activity on the data links (para. 24). It asks whether the data links should be expanded to accommodate the volume of traffic expected with opening of the 888 code, or whether the volume would be only temporary.

MCI expects that the high volume that may be experienced at the opening of the 888 resource would be temporary and would not be maintained throughout the life of the code. Nevertheless, it is worth noting that prior to institution of the 800 conservation measures, MCI had experienced problems with number reservations that were associated with the limitations of the local exchange carriers' data links. This may indicate that the data links

are insufficient to handle general operations of toll-free reservation and assignment. If the FCC is concerned that the volume may exceed the technological capabilities of Bellcore and some of the local exchange carriers, then the FCC should direct them to upgrade their data links. As mentioned above, RespOrgs are paying access fees to these carriers for 800 routing. These fees should be used to maintain the network so that it can comfortably accommodate the projected toll-free needs. The industry and toll-free customers should not be required to suffer with daily limits on the quantity of numbers that can be reserved due to outdated capabilities of one or more of the local carriers.

The FCC also proposes allowing numbers to be reserved 45 days in advance of the general availability of the next toll-free code but not allowing those reservations to change to working status until the availability date or beyond (para. 25). As a measure to alleviate the heavy burden related to opening of the new 888 code, MCI supports using an advance reservation period beginning 45 days before the code is opened for general activity. This should reduce the load on the data links that might otherwise occur because of the demand that has not been satisfied due to 800 conservation measures. The first-come, first-served principle should apply during the advance reservation period.